

**In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division**

In the matter of:

JAMES LARRY BELL, JR.
ANITA HICKS BELL
(Chapter 13 Case 92-40220)

Debtors

JAMES LARRY BELL, JR.
JAMES LARRY BELL, SR.

Plaintiffs

v.

ASSOCIATES FINANCIAL
SERVICE COMPANY OF ALABAMA

Defendant

Adversary Proceeding

Number 93-4010

FILED

at 9 O'clock & 48 min A M

Date 7/13/93

MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia *SA*

MEMORANDUM AND ORDER

Debtor and his father, a co-signer on the obligation at issue, filed an

adversary proceeding against Associates Financial Services Company of Alabama ("Associates") on January 19, 1993. On April 29, 1993, pursuant to notice the case was assigned for trial. Associates made no appearance at trial. Upon consideration of the evidence adduced at that hearing and the applicable authorities, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

Debtor filed his Chapter 13 petition on February 3, 1992. This Chapter 13 plan was confirmed on June 30, 1992. The plan lists Associates as secured with an \$8,224.97 claim plus interest. Debtor provided in his plan that Associates would be paid in full for the 1986 Grand Am automobile in order to protect a co-signer. Debtor's father co-signed the obligation in favor of Associates. Under 11 U.S.C. Section 1301, the co-debtor stay protects individuals who have co-signed obligations with Chapter 13 debtors.

In July of 1992, after confirmation of the plan, one of Defendant's employees contacted Debtor directly and informed him that the account needed to be paid. Debtor informed the employee, who was already aware of the bankruptcy case,

that the debt would be paid in his Chapter 13 plan. The employee told Debtor that was not good enough and that Associates intended to pursue Debtor's father to collect the amount owed.

Debtor testified that he proposed to pay the Associates debt in full so that his father would not learn about the bankruptcy case. However, the Associates employee called Debtor's father, told him about the bankruptcy case, and threatened to destroy the father's credit rating if payments were not made.

In December of 1992, the father went to Capital Mortgage to refinance his house. The refinancing would have reduced his interest rate from 13¾% to 6½% and would have reduced his payments from \$572.00 to \$387.00. The father would have saved nearly \$44,000.00 over the term of the loan. After the company obtained a copy of his credit report, the company refused to refinance. See Credit Report, Plaintiffs' Exhibit "3." The credit report lists the Associates Finance account with the code "15BL5ED." The index to code indicates the "BL" means "Discharged in Bankruptcy." The report also shows the "date closed" on the Associates account as "5/92F." The index to code reveals that "F" stands for "Repossessed/Written Off/Collection." The father had no other blemishes on his credit report. Two months

prior to the April hearing, the father went to a department store and attempted to use his charge account. He was turned down and has since been forced to pay cash for all of his purchases.

The Bells seek \$100,000.00 in punitive damages, compensatory damages including lost wages and vacation time, costs including attorney's fees and out-of-pocket expenses. Debtor also asserted a claim for the mental anguish and strain associated with his father's learning of the bankruptcy despite Debtor's careful attempts to avoid his father's finding out about the bankruptcy filing. Associates failed to make an appearance at the April 29, 1993, hearing, at which time the court heard testimony from Debtor and his father.

CONCLUSIONS OF LAW

A major benefit granted in Chapter 13 is the co-debtor stay found in 11 U.S.C. Section 1301. The purpose of the co-debtor stay is to enable the consumer debtor to propose a payment plan without undue pressure to give preference to debts involving co-signers. Harris v. Ft. Oglethorpe State Bank, 721 F.2d 1052 (6th Cir. 1983). The legislative history of Section 1301 is clear:

This section . . . is designed to protect a debtor operating under a chapter 13 individual repayment plan by insulating him from indirect pressures from his creditors exerted through friends or relatives who may have co-signed an obligation of the debtor.

H.R. Rep. No. 95-595, 95th Cong., 1st Sess. at 426 (1977). *See also* Matter of Singleton, Chapter 13 Case No. 90-41191, Adversary No. 90-4145 (Bankr. S.D.Ga. December 4, 1990).

Besides the co-debtor stay, the automatic stay protects a debtor from "any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title." 11 U.S.C. §362(a)(6). Under Section 362(h) parties injured by a willful violation of the automatic stay may recover damages, costs, and attorney's fees.

A violation of the stay is "willful" if the violator commits an act proscribed by Section 362(a) with knowledge that a bankruptcy case is pending, or knowledge of "sufficient facts which would cause a reasonably prudent person to make further inquiry to determine whether a petition had been filed." In re Bragg, 56 B.R. 46 (Bankr. M.D.Ala. 1985). *See also* In re LaTempa, 58 B.R. 538 (Bankr. W.D.Va.

1986).

Here, Associates had actual notice of the bankruptcy filing before calling debtor. According to Debtor's testimony, the employee admitted knowing about the bankruptcy filing. Debtor explained to the employee that the case had been filed and that the claim would be paid in full. Associates' contact and the demands made on Debtor constituted a violation of the automatic stay. 11 U.S.C. §362(a)(6). Moreover, Associates later proceeded to call Debtor's father and demand payment from him. Worse the employee threatened to destroy the father's credit rating if the debt was not paid and proceeded to do so. I conclude that these acts clearly violated 11 U.S.C. Section 362(a)(6) and 11 U.S.C. Section 1301. See Matter of Sommersdorf, 139 B.R. 700 (Bankr. S.D. Ohio 1991) ("The notation on the non-debtor co-maker's credit report violates the automatic stay of action against the co-debtor of §1301"). I also hold that the acts were willful. In re Atlantic Business and Community Corp., 901 F.2d 325 (3rd Cir. 1990); In re Bloom, 875 F.2d 224, 227 (9th Cir. 1989) (A willful violation of the stay occurs if defendant knew of the automatic stay and if defendant's actions were intentional). When a willful violation of the stay has occurred 11 U.S.C. Section 362(h) provides:

An individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

Both Debtor and Mr. Bell, Sr., were injured by Associates' acts. While ordinarily only the Debtor will be an "individual injured," in this case the co-debtor to whom protection is granted by Section 1301 was also injured. Although Section 1301 has no separate damages provision, I hold that an "individual injured" for purposes of Section 362(h) includes a co-debtor protected by Section 1301 if the act which violates Section 362 also injures the co-debtor.

This court has applied the general rule of *respondent superior* in cases involving stay violations. Matter of Blair, Chapter 13 Case No. 187-00593, Adversary No. 187-0039 (Bankr. S.D.Ga. February 11, 1988). I therefore conclude that Associates is liable for the acts of its employees which violated the automatic stay and the co-debtor stay.

Accordingly, Associates' claim in this case shall be disallowed. Second, Associates shall convey title to the 1986 Grand Am automobile to Debtor after

canceling any liens thereon. Third, Associates shall correct any adverse credit report to any agency of James Larry Bell, Sr. Fourth, compensatory and punitive damages are awarded to Debtor and his father as follows:

James Larry Bell, Sr., was damaged by his inability to refinance his home. Associates' report to the credit reporting agency directly resulted in his loan application being declined. I find that Mr. Bell, Sr., is entitled to recover \$44,000.00,¹ the amount he would have saved if his home had been refinanced at the lower rate of interest. Further, Mr. Bell, Sr., is entitled to \$800.00 in lost wages and expenses associated with prosecuting this action.

James Larry Bell, Jr., forfeited three days of vacation to appear in court at a cost of \$45.00 per day. He incurred attorney's fees for the prosecution of this action and he has been severely harmed by the strain placed on his relationship with his father. He at all times intended to pay Associates in full. Section 1301 guaranteed that his father, as co-debtor, would not be drawn into his bankruptcy case. Associates willfully and callously violated the stay and sought to damage Debtor's

¹ Associates will be entitled to a reduction of this sum to present-day value if a timely request is made pursuant to Bankruptcy Rule 9023 (F.R.C.P. 59e) and is accompanied by competent evidence of the appropriate discount to be applied.

father's unblemished credit record. That act also damaged a cherished relationship between father and son who clearly care for and respect each other. That act was reprehensible and demands an award of punitive damages. I therefore find that Debtor and his father are jointly entitled to an additional sum of \$25,000.00 in punitive damages. *See generally* In re Crysen/Montenay Energy Co., 902 F.2d 1098, 1105 (2nd Cir. 1990) (Actual damages may be awarded for a willful violation of the automatic stay, and punitive damages may be awarded upon the additional finding of maliciousness and bad faith). *See also* Matter of Sommersdorf, 139 B.R. 700, 702 (Bankr. S.D. Ohio 1991) (An award of damages is appropriate as the co-debtor stay serves to protect the debtor).

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY THE ORDER OF THIS COURT that Defendant, Associates Financial Services Company of Alabama, shall pay to Plaintiff, James Larry Bell, Sr., \$44,800.00 in compensatory damages and expenses.

IT IS FURTHER ORDERED that Defendant, Associates Financial

Services Company of Alabama, shall pay \$135.00 to Plaintiff, James Larry Bell, Jr., in compensatory damages and expenses.

IT IS FURTHER ORDERED that Associates Financial Services Company of Alabama shall pay to Plaintiffs, James Larry Bell, Jr., and James Larry Bell, Sr., jointly, an additional sum of \$25,000.00 in punitive damages. Attorney's fees are awarded in the amount of \$2,500.00.

IT IS FURTHER ORDERED that the claim of Associates Financial Services Company of Alabama in this Chapter 13 case is disallowed and Associates IS ORDERED to convey to Debtor a clear title to the vehicle. Associates IS FURTHER ORDERED to correct any adverse credit report published in reference to James Larry Bell, Sr.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 12th day of July, 1993.